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3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 NATHANIEL D. ALLEN,

6 v. Plaintiff,

7 CITY OF RENO, et al.,

8 Defendants.

Case No. 3:20-cv-00432-ART-CSD

ORDER ON MOTION FOR
SUMMARY JUDGMENT

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10 Before the Court is Defendant Jacob Kinkade's motion for summary
11 judgment (ECF No. 33). Defendant Kinkade bases his motion for summary
12 judgment upon pro se Plaintiff Nathaniel D. Allen's failure to respond to a set of
13 requests for admissions served upon Plaintiff on July 20, 2021, which are deemed
14 admitted by virtue of Plaintiff's failure to respond pursuant to Fed. R. Civ. P.
15 36(a)(3). Plaintiff explains in his response to Defendant Kinkade's motion for
16 summary judgment that he did not understand the requests for admissions and
17 did not respond to them because he thought that responding to them would
18 constitute consent to an offer of judgment which was served upon Plaintiff at the
19 same time. (ECF No. 35.) Because Plaintiff is proceeding pro se and because the
20 requests for admissions did not notify Plaintiff of the effect of failing to respond
21 to them, the Court extends the time for Plaintiff to answer Defendant Kinkade's
22 requests for admissions and denies Defendant Kinkade's motion for summary
23 judgment without prejudice as premature.

24 **I. DISCUSSION**

25 Plaintiff's amended complaint seeks compensatory damages against
26 Defendant Kinkade individually and against the City of Reno for failure to train
27 and supervise Defendant Kinkade. (ECF No. 9.) The Court screened Plaintiff's
28 amended complaint and dismissed the claim against the City of Reno without

1 prejudice, allowing the claim against Defendant Kinkade to proceed. (ECF No.
2 15.) The Court issued a scheduling order which set a discovery cutoff date of
3 September 21, 2021. (ECF No. 19.)

4 On July 20, 2021, Defendant Kinkade served upon Plaintiff a set of
5 requests for admissions. (ECF No. 33.) According to Plaintiff, at this time
6 Defendant Kinkade served upon Plaintiff a total of six items: (1) a request for
7 production of documents; (2) the set of requests for admissions at issue; (3) a
8 stipulation for dismissal with prejudice; (4) a release of all claims form; (5) a W-9
9 form; and (6) an offer of judgement in the amount of \$500. (ECF No. 35.) Plaintiff
10 explains that he mistakenly thought that the requests for admissions were related
11 to the offer to settle the case and that by responding to them, he would be
12 accepting Defendant Kincade's offer of judgment, which he did not want to do.
13 (*Id.*) Defendant Kincade's requests for admissions did not contain any language
14 notifying or warning Plaintiff that failure to respond to the requests for
15 admissions would entail that the matters would be deemed admitted. (ECF No.
16 33-1.)

17 This issue was considered in *Diggs v. Keller*, 181 F.R.D. 468, 469 (D. Nev.
18 1998). In *Diggs*, a pro se prisoner plaintiff faced a summary judgment motion
19 from the defendants based on admissions which were deemed admitted due to
20 the plaintiff's failure to respond to a set of requests for admissions. *Id.* The
21 requests for admissions did not advise the plaintiff that failure to respond would
22 entail that the matters in the requests would be deemed admitted. *Id.* The plaintiff
23 explained that he did not respond to the requests for admissions based on the
24 mistaken thought that he could answer the requests for admissions in person at
25 an oral deposition. *Id.*

26 Citing *Klingele v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988), the
27 court in *Diggs* held that "pro se prisoners are entitled to notice that matters found
28 in requests for admission will be deemed admitted unless responded to within 30

1 days after such requests have been served." *Id.* ("To hold otherwise would allow
2 parties opposing pro se prisoner complaints to use Rule 36 procedures as a snare
3 which prevents pro se prisoners from opposing summary judgment."). *Diggs* is
4 instructive here because Defendant Kinkade's requests for admissions did not
5 notify or warn Plaintiff, who is pro se, of the consequences of not responding. The
6 Court will grant Plaintiff additional time to respond to the requests for admissions
7 and advise him of the necessity of answering. *See Fed. R. Civ. P. 36(a)(3)*
8 (authorizing court to extend or shorten time to respond to requests for
9 admissions). In light of the extension of time granted to Plaintiff, the Court will
10 deny Defendant Kinkade's motion for summary judgment without prejudice as
11 premature.

12 **II. CONCLUSION**

13 It is therefore ordered that Defendant Kinkade's motion for summary
14 judgment (ECF No. 33) is denied without prejudice.

15 It is further ordered that Plaintiff Allen shall have 30 days from the date
16 this order is served to respond to Defendant Kinkade's requests for admissions.
17 Plaintiff is advised and notified that pursuant to Rule 36 of the Federal Rules of
18 Civil Procedure that the matters contained in Defendant Kinkade's requests for
19 admissions shall be deemed admitted unless the requests are responded to within
20 30 days after this order is served upon Plaintiff.

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22 DATED THIS 16th day of November 2022.

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ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE